

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

LPA No. 21 of 2007

Date of Decision : 10.7.2007

Gokal Chand

...Appellant.

Versus:

State of H.P. & others

...Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, ACJ.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ No

For the appellant: Mr. G. R. Palsra, Advocate.

For the respondents. None

Deepak Gupta, ACJ (Oral).

This LPA is directed against the order dated 17.4.2007 passed by the learned Single Judge in CWP No. 542/2002 dismissing the writ petition by the only two grounds raised in the petition are;

- i) firstly that the order of the learned Revenue Authority reducing the grant of nautor land to the petitioner on the ground that the land is slopy, is illegal and void since the land was granted to the petitioner for horticulture purpose;

¹ Whether reporters of Local Papers may be allowed to see the judgment?

ii) secondly that there was an arbitration clause in the patta and, therefore, the matter should have been referred to arbitration.

As far as the first contention raised by the appellant is concerned, it is apparent that this contention has been raised for the first time in this appeal. A perusal of the orders of the Revenue Officers shows that this contention was never raised before them. It was also not raised before the learned Single Judge and there is no such pleading in the writ petition. The appellant cannot be permitted to raise a ground which was neither raised before any of the revenue authorities nor before the learned Single Judge. The present writ is in the nature of a writ of certiorari against the orders of the Revenue Officers. The validity of the orders has to be tested on the basis of the pleadings and contentions raised before the authorities. Since this point was not raised by the appellant before the Revenue Authorities, he cannot be permitted to raise this point at this stage.

As far as the second contention is concerned, it is obvious that the appellant waived his right, if any, to have the matter referred to arbitration since he willingly consented to and took part in the proceedings of his own volition. Not only did he take part in the proceedings before the first revenue authority but he chose to file an appeal against the order passed by it and, therefore, subjected himself to the hierarchy of the Revenue

Officers. At this stage, the appellant cannot be heard to say that the matter should be referred to arbitration. There is no merit in the appeal, which is dismissed.

(Deepak Gupta),ACJ.

July 10, 2007
(rana)

(Sanjay Karol), J.